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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/697,726	10/30/2003	Gene A. Loness	NEEC 8772US	7714
1688 7590 08/10/2007 POLSTER, LIEDER, WOODRUFF & LUCCHESI 12412 POWERS COURT DRIVE SUITE 200 ST. LOUIS, MO 63131-3615			EXAMINER MONIKANG, GEORGE C	
			ART UNIT 2615	PAPER NUMBER
			MAIL DATE 08/10/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/697,726

Applicant(s)

LONESS ET AL.

Examiner

George C. Monikang

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-16 is/are pending in the application.
- 4a) Of the above claim(s) 1 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>1/30/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 5/18/2007 for claims 2 & 3 have been fully considered but they are not persuasive.

With respect to Applicant's argument on page 11, Applicant "respectfully asserts that Neoh does not teach or suggest the use of sound selector comprised of a plurality of buttons wherein each button corresponds to a different sound (col. 3, lines 4-6: song selection, volume, bass and treble of controls), as set forth in Claim 2."

Neoh states "The controls 26 may be used to alter audio characteristics including volume, bass, and treble." Neoh also states "Additional controls 26 may be use for on/off selection, song selection, fast forward, reverse, skip and track repeat." The sound will change when the users increases the base, treble or even completely changes the track.

With respect to Applicant's argument on page 12, Applicant "Neoh does not disclose a circuit which is normally opened and which is normally opened and which is closed by pressing a selected sound selector button, as set forth in claim 3." (col. 3, lines 3-6: on/off selection of controls; the control is off when the remote circuit is open and on when it is closed).

Neoh discloses in col. 3, lines 3-6 and on/off selection button. The circuit of the system is open when the system is off and closed when the system is on.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 2 & 3 are rejected under 35 U.S.C. 102(e) as being anticipated by Neoh, US Patent 6,728,585 B2.

Re Claim 2, Neoh disclose a remotely operated sound generator (fig. 3: wireless entertainment device) capable of selectively broadcasting a desired one of a plurality of sounds (col. 3, lines 3-6: songs have different sounds and the song election feature suggests a plurality of sounds; col. 3, lines 16-19: information transmitted to remote control unit includes number of songs stored which suggests a plurality of sounds); said sound generator comprising a remote control unit (fig. 3: 18; col. 3, lines 1-2) comprising a transmitter (col. 3, lines 1-3), a sound selector (col. 3, lines 3-6: song selection), and an activator (col. 3, lines 3-6: on/off selection of controls); said remote control unit, when activated, transmitting a signal indicative of a desired one of the plurality of sounds (col. 3, lines 6-8: the receiver will receive whatever sound type, song selection the control unit transmits); said sound selector comprises a plurality of buttons, each button corresponding to a different sound (col. 3, lines 1-6: song

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selection, volume, bass and treble of controls) and a base unit (fig. 3: 14) comprising a sound memory on which a plurality of sounds can be stored (col. 3, lines 6-9 & col. 3, lines 16-19: information transmitted to remote control unit includes number of songs stored which suggests different sounds can be stored in the memory), a speaker (fig. 3: 14 & col. 3, lines 6-7; a wireless headphone unit includes speakers), and a receiver (col. 3, lines 6-8); said base unit receiving said signal from said remote control unit (col. 3, lines 6-8), and, upon receipt of said signal, broadcasting said one of said selected sounds through said speaker (col. 3, lines 6-11).

Re Claim 3, Neoh discloses the remotely operated sound generator of claim 2 wherein said activator comprises said sound selector buttons (col. 3, lines 3-6: on/off selection of controls), whereby a circuit of said remote control unit is normally opened, said circuit being closed when one of said sound selector buttons is pressed to transmit said signal (col. 3, lines 3-6: on/off selection of controls; the control is off when the remote circuit is open and on when it is closed).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Neoh, US Patent 6,728,585 B2 as applied to claim 2 above, in view of Braun et al, US Patent 6,512,832 B1.

Re Claim 4, Neoh discloses the remotely operated sound generator of claim 2 but fails to disclose wherein said signal includes a unit identification code; said base unit including means for storing said unit identification code (*Braun et al, col. 1, lines 54-58*); said base unit further including means for comparing the identification code stored in the base unit with the identification code received in the signal (*Braun et al, col. 1, lines 54-65*); said base unit playing a sound only if the identification code received with the signal matches the identification code stored in the base unit storage (*Braun et al, col. 3, line 66 through col. 4, line 13; col. 4, lines 14-28*); the sound generator further including a switch for altering the signal unit identification code (*Braun et al, col. 4, lines 14-28*). However, Braun et al does.

Taking the combined teachings of Neoh and Braun et al as a whole, one skilled in the art would have found it obvious to modify the remotely operated sound generator of Neoh with wherein said signal includes a unit identification code; said base unit

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including means for storing said unit identification code (Braun et al, col. 1, lines 54-58); said base unit further including means for comparing the identification code stored in the base unit with the identification code received in the signal (Braun et al, col. 1, lines 54-65); said base unit playing a sound only if the identification code received with the signal matches the identification code stored in the base unit storage (Braun et al, col. 3, line 66 through col. 4, line 13; col. 4, lines 14-28); the sound generator further including a switch for altering the signal unit identification code (Braun et al, col. 4, lines 14-28) as taught in Braun et al so that the signals can be identified.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Neoh, US Patent 6,728,585 B2 and Braun et al, US Patent 6,512,832 B1 as applied to claim 4 above, and further in view of Gulliford et al, US Patent 5,384,776.

Re Claim 5, Neoh and Braun et al disclose the remotely operated sound generator of claim 4 but fails to disclose wherein said switch comprises one or more DIP switches in one or both of said remote control unit and said base unit; said means in said base unit for storing said unit identification code comprising said DIP switches. However, Gulliford does (col. 13, lines 9-18).

Taking the combined teachings of Neoh, Braun et al and Gulliford et al, one skilled in the art would have found it obvious to modify the remotely operated sound generator of claim 4 of Neoh and Braun et al with wherein said switch comprises one or more DIP switches in one or both of said remote control unit and said base unit; said means in said base unit for storing said unit identification code comprising said DIP

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switches as taught in Gulliford (col. 13, lines 9-18) to customize the behavior of the remotely operated sound generator for specific situations.

Claims 6-7, 11, 13-14 & 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Neoh, US Patent 6,728,585 B2 as applied to claim 4 above, in view of Johnston, US Patent 6,002,779.

Re Claim 6, Neoh discloses the remotely operated sound generator of claim 2, but fails to disclose including a record switch to selectively switch said base unit between a play back mode and a record mode and an input for receiving new sounds, whereby, when said base unit is in its recording mode, a sound received through said input is stored at a selected location in said base unit. However, Johnston does (abstract).

Taking the combined teachings of Neoh and Johnston as a whole, one skilled in the art would have found it obvious to modify the remotely operated sound generator of Neoh with including a record switch to selectively switch said base unit between a play back mode and a record mode and an input for receiving new sounds, whereby, when said base unit is in its recording mode, a sound received through said input is stored at a selected location in said base unit as taught in Johnston (abstract) to create a more dynamic system.

Re Claim 7, the combined teachings of Neoh and Johnston disclose the remotely operated sound generator of claim 6 wherein said record switch is located on said base unit (Johnston, figs. 1 & 4: 14).

Claim 11 has been analyzed and rejected according to claims 2 & 6.

Re Claim 13, the combined teachings of Neoh and Johnston disclose the remotely operated sound generator of claim 11 including means for associating a sound with a signal from said remote control unit during recording of a new sound (Neoh, col. 3, lines 20-24).

Re Claim 14, the combined teachings of Neoh and Johnston disclose the remotely operated sound generator of claim 13 wherein said sound associating means comprises said sound selector of said remote control unit (Neoh, col. 3, lines 3-12: controls 26).

Re Claim 16, the combined teachings of Neoh and Johnston disclose a remotely operated sound generator of claim 6, wherein each said sound selector button correspond to a location in said base unit (Neoh, col. 3, lines 1-6: song selection), the sound being stored at said location being played when the corresponding sound selector button is pressed (Neoh, col. 3, lines 6-9 & col. 3, lines 16-19: information transmitted to remote control unit includes number of songs stored which suggests different sounds can be stored in the memory); wherein, when said base unit is in said record mode, new sounds may be recorded in only a subset of all the locations (Johnston, abstract: channels).

Claims 8-9, 12 & 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Neoh, US Patent 6,728,585 B2 and Johnston, US Patent 6,002,779 as applied to claim 6 above, and further in view of Bauer, US Patent 5,832,438.

Re Claim 8, the combined teachings of Neoh and Johnston disclose the remotely operated sound generator of claim 6 but fails to disclose wherein said sound input comprises a microphone. However, Bauer does (abstract).

Taking the combined teachings of Neoh, Johnston and Bauer as a whole, one skilled in the art would have found it obvious to modify the remotely operated sound generator of Neoh and Johnston with wherein said sound input comprises a microphone as taught in Bauer (abstract) so that sound can be inputted into the remotely operated sound generator by a user.

Re Claim 9, the combined teachings of Neoh, Johnston and Bauer disclose the remotely operated sound generator of claim 8 wherein said input comprises a line in-jack, said line-in jack being adapted to removably connect said base unit to an external microphone or a device capable of playing sounds (Bauer, abstract).

Claim 12 has been analyzed and rejected according to claims 2, 6 & 8-9.

Claim 15 has been analyzed and rejected according to claims 2, 6 & 8-9.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Neoh, US Patent 6,728,585 B2 as applied to claim 2 above, in view of Bauer, US Patent 5,832,438.

Re Claim 10, Neoh discloses the remotely operated sound generator of claim 2 but fails to disclose wherein said base unit comprises a line-out jack to removably connect said base unit to a recording device to record the sounds stored in said base unit memory. However, Bauer does (abstract & col. 1, lines 35-38).

Taking the combined teachings of Neoh and Bauer as a whole, one skilled in the art would have found it obvious to modify the remotely operated sound generator of Neoh with wherein said base unit comprises a line-out jack to removably connect said base unit to a recording device to record the sounds stored in said base unit memory as taught in Bauer (abstract & col. 1, lines 35-38) to enable the generator to receive wired signals.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George C. Monikang whose telephone number is 571-

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270-1190. The examiner can normally be reached on M-F. alt Fri. Off 7:30am-5:00pm (est).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chin Vivian can be reached on 571-272-7848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

George Monikang

7/24/2007


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